

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MEMORANDUM AND ORDER

This matter is before the Court on review of plaintiff's complaint. The Court lacks jurisdiction over the matter, and the case is dismissed.

Discussion

Under Rule 12(h)(3) of the Federal Rules of Civil Procedure, the Court is required to dismiss a complaint if subject matter jurisdiction is lacking.

“Federal courts are courts of limited jurisdiction. The requirement that jurisdiction be established as a threshold matter springs from the nature and limits of the judicial power of the United States and is inflexible and without exception.” *Kessler v. Nat'l Enterprises, Inc.*, 347 F.3d 1076, 1081 (8th Cir. 2003) (quotation marks omitted); *see Kuhl v. Hampton*, 451 F.2d 340, 342 (8th Cir. 1971) (federal courts “were not established to mediate any and all types of complaints and alleged wrongs.”).

There are two avenues to jurisdiction in federal court. Under 28 U.S.C. § 1331, the Court has “jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” And under § 1332, the Court has jurisdiction over state law cases involving citizens of different states where the matter in controversy exceeds \$75,000.

This action arises from plaintiff's 2010 suit against Wal-Mart. *Clark v. Wal-Mart*, No. 4:10-CV-1302 AGF. Plaintiff sued Wal-Mart under 42 U.S.C. § 1981 for its refusal to sell him a firearm. On May 1, 2012, plaintiff voluntarily dismissed the suit with prejudice after mediation.

In this action, plaintiff says his lawyer was negligent during settlement negotiations for advising him to settle the case for \$17,500, instead of \$35,000. He claims he was intimidated by the mediator during the process. He is suing Wal-Mart, his attorney, and the mediator. He alleges he has suffered emotional distress as a result.

Negligence and emotional distress are matters of state law. The Court lacks jurisdiction over the case because plaintiff and the defendants are not residents of different states. Therefore, this action is dismissed.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [ECF No. 2] is **GRANTED**.

IT IS FURTHER ORDERED that this action is **DISMISSED** without prejudice.

An Order of Dismissal will be filed separately.

Dated this 12th day of October, 2016.

\s\ Jean C. Hamilton
UNITED STATES DISTRICT JUDGE